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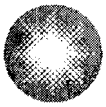

Constellation Energy

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Department of Energy Public Meeting – June 15, 2007
On the Notice of Proposed Rulemaking Implementing the Loan Guarantee Program for Projects that Employ Innovative Technologies

I. Introduction

My name is Mike Wallace, and I am the President of Constellation Generation Group and an Executive Vice President for Constellation Energy, a Fortune 200 energy company. I appreciate the opportunity to submit written comments to the Department of Energy on behalf of Constellation about the importance of the loan guarantee program to our efforts to develop new nuclear power plants in the United States. My colleague, Joe Turnage, will present oral comments on behalf of Constellation at the public meeting on June 15, 2007.

Constellation Energy is a competitive energy company, and our principal offices are located in Baltimore Maryland. We are the nation's leading supplier of competitive electricity to large commercial and industrial customers. We are a major generator of electricity with a diversified fleet strategically located throughout the U.S. We are here today because Constellation is dedicated to the new nuclear renaissance. We realize the importance of nuclear energy as the only baseload source of energy that is greenhouse-gas-free. Constellation currently has a fleet of five nuclear reactors located in Maryland and New York, and we are regarded as one of the most efficient and safety conscious

owner/operators in the country as evidenced by our fleet capacity factor, our fleet production costs, and many indicators of performance improvement across our fleet. This is a fact that we take great pride in. Because our generating portfolio is primarily nuclear, approximately 60% of our generation produces no greenhouse gases.

We have been an industry leader in the effort to develop and deploy a standardized fleet of efficient and safe new nuclear plants in North America. Accordingly, we were actively involved during the debate and passage of the Energy Policy Act of 2005. We believe that the Act is critical to this nation's efforts to reduce dependency on foreign sources of energy while at the same time to develop innovative technologies designed to create a path to a low carbon energy future. We have commended both the Congress and the Bush Administration for passing this landmark legislation.

II. Energy Policy Act of 2005

The incentives in the Energy Policy Act are predicated on Congress's well-grounded understanding of the difficulty energy companies face when trying to build large, complex, capital-intensive energy projects. This difficulty is exacerbated for nuclear projects because of the tainted legacy of the past, a legacy characterized by a two-step licensing process that resulted in huge cost over-runs and delays, abandoned projects, bankruptcies, and in some cases, completed plants never being commissioned. Twenty-eight (28) years after Three Mile Island, we are only now beginning to overcome this legacy.

We at Constellation recognized quite early that the incentives contained in Energy Policy Act would be necessary to bring about the new nuclear renaissance. This recognition was driven in part by my past experience. I am the only nuclear executive in the U.S. who

was also an executive during the last round of nuclear construction. While at Commonwealth Edison (now Exelon), I had overall responsibility for the construction of the Byron and Braidwood nuclear plants, with a special focus of Braidwood as the last of six new plants that were completed in the 1980s, and I experienced first-hand those tumultuous delays and cost overruns.

Therefore, as a company dedicated to new nuclear, we were pleased that the final bill contained substantial stand-by support provisions. The industry absolutely requires that assurance of regulatory stability, and we are pleased that the NRC has thus far implemented Part 52 in a timely and transparent manner.

Likewise, the production tax credits contained in the Energy Policy Act are necessary to incentivize early movers who may otherwise be reluctant to be the first to market.

But the most important Energy Policy Act incentive for new nuclear is the Title XVII loan guarantee program, which we view as indispensable. The loan guarantees are meant to address a market financing gap that results from the combination of several factors including, (i) the prior nuclear plant construction cycle that, as mentioned early, was burdened by regulatory uncertainty and resulting delays and cost overruns; (ii) perceived uncertainty of an untested (though certainly improved) regulatory system; (iii) perceived technology risk, and (iv) an institutional loss of understanding regarding the reality of nuclear financial risk in some elements of the financial community.

The loan guarantee program is intended to fill this financing gap by creating a non-recourse financing platform whereby energy companies, with relatively modest market caps, particularly when compared to the capital costs of a new nuclear project, are allowed to leverage their limited equity in a manner not possible without the benefit of the guarantee.

By requiring significant equity toward a project's cost, the program insures that only credit-worthy projects will apply.

Since the passage of the Energy Policy Act, and in reliance on the incentives contained in this legislation, Constellation has been actively pursuing our vision of the new nuclear re-birth. For example, in September 2005, we selected the U.S. Evolutionary Power Reactor, a pressurized water reactor designed by Areva, as our technology choice.

Also in September 2005, we formed a joint venture with Areva called UniStar Nuclear, the ultimate purpose of which is to construct a fleet of standardized U.S. EPRs in the United States, to the benefit of those parties who join us in this endeavor. In May, 2006, we began working on the combined construction permit and operating license application, which we plan to submit in full to the NRC in December 2007. This license will be for the construction and operation of a U.S. EPR at our current site in Calvert County, Maryland. In July 2006, we submitted the COLA section relating to our project's quality assurance program, and we received NRC approval of this section this past March.

Last fall, we placed an order for the initial forgings that are required to construct the first U.S. EPR. To date, with our partners, we have spent several hundred million dollars on our new nuclear efforts. Obviously, given our commitment to date and our appreciation for the importance of a workable loan guarantee program, we have followed the rule-making process for Title XVII very closely and with some anxiety. We have been hopeful that the rules governing the loan guarantee program will reflect the visionary spirit of the Energy Policy Act.

III. NOPR

Constellation has had an opportunity to review the Notice of Proposed Rulemaking ("NOPR") that was published by the DOE in the Federal Register on May 16, 2007, and we will submit detailed comments prior to the July 2 deadline. Therefore, for today's purposes, I do not intend to offer a full critique of the NOPR. Rather, I would like to share Constellation's concerns with the NOPR, focusing on a few issues that we view as critical. Then, I would like to offer some suggestions that we believe will address both the justified concerns of the Department of Energy and the needs of the industry.

Constellation's largest concern surrounds the issue of the percentage of a project's debt the loan guarantee will cover. We note that Title XVII authorized the DOE Secretary to issue guarantees up to "80 percent of the project cost of the facility that is the subject of the guarantee." Section 1702(c).

Given the current financing gap in the market and in light of Congress's intent, we believe DOE would be fully justified in guaranteeing one hundred percent (100%) of a project's debt, up to the 80% of project cost threshold. However, in the NOPR, the Department insists that each project have a tranche of non-guaranteed debt.

Candidly, we understand the appeal of having a tranche of non-guaranteed debt. The requirement that lenders have "skin in the game" is based on a belief by the Department that non-guaranteed lenders taking project risk will complete rigorous credit analysis and project diligence to insure that the project is commercially viable.

While we understand DOE's position, we do not believe it is either (i) necessary in order to assure repayment and adequately protect the taxpayers or (ii) achievable at this stage for new nuclear plant financings. Under the right conditions, we believe that private lenders,

or even export credit agencies, could have the risk appetite to subscribe a small, non-guaranteed tranche of project debt. And it should be our mutual goal to get to this stage as rapidly as possible as a necessary step toward full commercial financing.

But the key words are "under the right conditions", and unfortunately, before the market can even consider providing such financing on even a limited basis, the NOPR contains other requirements that will prejudice the non-guaranteed debt to such a degree that lenders will refuse to participate, and the program will fail.

I am referring, of course, to the requirements that the DOE be in a superior lien position vis-à-vis non-guaranteed debt and to the prohibition against stripping the guaranteed and non-guaranteed debt. These positions, when taken together, are incompatible with a non-recourse project financing. Under these conditions, lenders will choose not to participate. This being the case, what then is the solution?

One possible solution might be to allow both a *pari passu* security structure and stripping. However, based upon our review of the NOPR and DOE's discussion of the proposed rule, we understand that this option is probably not available. It seems clear to us that the reason DOE insists upon a superior lien is because of its statutory interpretation of Title XVII. As a consequence, DOE believes that it does not have the authority to change its position. (As an aside, we disagree with this interpretation).

This begs the question of whether allowing stripping alone would lead to a viable loan guarantee program. And the answer is "no, it would not." It is not a fair assumption that non-recourse, non-guaranteed and deeply subordinated debt will be available to these projects – at any price. The only way to imagine this working, other than placing the debt with the project sponsor, is that the non-guaranteed debt would demand the benefit of a

corporate guarantee. But we believe the logic in this approach is flawed for the following reasons: first, the NOPR contemplates that any credit support given to the non-guaranteed debt would also have to be made available to the guaranteed debt. In this case, the non-recourse nature of the project is destroyed.

Second, if the non-guaranteed debt receives preferential credit support in the form of a guarantee, then the Department's rationale for requiring non-guaranteed debt, which is to say the independent credit analysis, would no longer exist.

Therefore, based upon our analysis of these issues, we have come to the conclusion that having the guarantee issued by the Department of Energy cover all of the debt of the project, up to eighty percent (80%) of the total project cost, is the only regulatory solution to creating a workable program. We believe that DOE can adopt this position in the final rule while at the same time taking steps to address its valid concerns, including its fiduciary responsibilities as stewards to taxpayer dollars, and we would like to recommend the following as an alternative approach:

IV. Recommendations

Our recommendations for meeting the goals of both DOE and the energy industry include the following:

1. We believe that the ultimate focus of the loan guarantee program should be on robust credit analysis and underwriting. With each project evaluated under the loan guarantee program, the Department should retain expert outside financial, technical and legal advisors to assist in a rigorous credit and legal analysis. This diligence process will result in the commercialization of

creditworthy and innovative projects while also insuring the lowest feasible cost of financing, which in turn minimizes the risk to taxpayers. There are many examples across the government of successful loan guarantee programs that function in exactly this matter. Perhaps the most analogous to this program are the loan guarantee programs at the Export-Import Bank and the Overseas Private Investment Corporation. These programs demonstrate that the federal government is more than capable of performing sound, professional due diligence for complex non-recourse financings of large infrastructure projects. Ironically, by insisting upon a very expensive sub-debt financing structure (assuming the debt existed), projects would be put at a much greater risk of default, certainly an unintended consequence.

2. The loan guarantee program should be temporary. Once the financing gap closes, then so too should the loan guarantee program. Our expectation is that by the time that the 5th nuclear plant (of each technology) has operated for five years, the market will have achieved the necessary level of comfort for the program to terminate.

3. We would hope to see the loan guarantee program budget ceiling authorized by Congress to adequate levels and several years in advance. Industry needs to operate with a fair degree of certainty. This is particularly true of the nuclear industry, where companies will spend hundreds of millions of dollars on long-lead time materials and other development costs in reliance on the fact that the loan guarantee office will be available and adequately funded.

V. Conclusion – A Sense of Urgency

Thank you for considering our recommendations, which we believe will lead to a successful program that addresses our concerns as well as yours. Before concluding, I would like to express the sense of urgency that we feel. We believe that it is very important for DOE to move quickly to establish a viable loan guarantee program along the lines that we recommend today.

Frankly, we have been frustrated at the lack of progress in establishing the loan guarantee program, but given the importance of this program to our energy security, to our environment and to this Administration's energy policy, we are still hopeful and optimistic that this Department will promulgate regulations that are attentive to the concerns of the industry and to the banks whose participation will be critical.

When the Energy Policy Act passed almost two years ago, we expected that the loan guarantee program would be in operation at this point. We appreciate that there are many reasons -- some of which are beyond your control -- why this is not the case. But please appreciate that we cannot continue to have an indefinite conversation about how to make this program work. We will not continue to go at risk without a clear line of sight to a workable program. And just as importantly, in a year or less, the momentum to build new nuclear plants in the United States will be lost to China, India and others. The competition for infrastructure resources is global, and we are competing not against other companies but against countries. In this environment, time is our enemy, and because the cost of failure is too high, we urge the Department of Energy to establish the program intended by Congress and the President.

Thank you very much for your attention and for the opportunity to provide our perspective on this very important matter.